

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCO ANTHONY GUTIERREZ,

Defendant and Appellant.

F077310

(Super. Ct. No. BF154468A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Charles R. Brehmer, Judge.

Robert Navarro, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Poochigian, Acting P.J., Franson, J. and Snauffer, J.

## **INTRODUCTION**

Appellant Marco Anthony Gutierrez pled no contest to one count of attempted murder, one count of attempted arson, and admitted a Penal Code section 12022, subdivision (b)(1), enhancement.<sup>1</sup> He was sentenced in accordance with his plea agreement. Gutierrez appealed, and appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

The facts are taken from the probation report. On April 16, 2014, a husband and wife were asleep along with their four children in the upstairs bedrooms of their home. Husband heard glass breaking downstairs and called police. The house began smelling like gasoline. An officer confirmed an incendiary device had been thrown into the house. The husband indicated his sister-in-law, who was not at home at the time, was having ongoing issues with her ex-boyfriend, Gutierrez.

The victim provided video surveillance of the incident, which showed Gutierrez throwing an incendiary device, a Molotov cocktail, through a window of the residence, breaking the glass. Another man with Gutierrez threw a Molotov cocktail onto the roof, but it failed to ignite. Both men then ran back to their vehicle and drove away. A recovered bottle had Gutierrez's palm print on it.

An amended information filed October 25, 2017, charged Gutierrez with six counts of attempted murder. As to each attempted murder count, enhancements pursuant to section 189 and section 12022, subdivision (b)(1), were alleged. Count 7 alleged conspiracy to commit arson in violation of section 451, and count 8 charged attempted arson in violation of section 455. Count 9 charged a violation of section 453, subdivision (a), possession of combustible materials with the intent to use such materials to commit arson.

---

<sup>1</sup> References to code sections are to the Penal Code unless otherwise specified.

On February 9, 2018, Gutierrez entered into a plea agreement. Gutierrez would plead no contest to counts 1 and 8, and admit the section 12022, subdivision (b)(1), enhancement. In exchange for his plea, the other counts were to be dismissed and Gutierrez was to receive a stipulated sentence of eight years in prison.

Before accepting the plea, the trial court verified that Gutierrez had signed and initialed the plea form and understood the form. When asked if he had any questions about the content of the form, Gutierrez responded, “No, sir.” Gutierrez waived his rights and the trial court accepted the waiver.

The parties stipulated that the report of the offense provided a factual basis for the plea.

The trial court accepted Gutierrez’s pleas to the charges and his admission of the enhancement and found the pleas and admission were “knowingly, intelligently and voluntarily entered.” Gutierrez also agreed that the dismissed counts could be considered in ordering fines, fees, and restitution.

After entry of Gutierrez’s plea, the People moved to dismiss the remaining charges and enhancements and the trial court granted the motion.

At the March 13, 2018 sentencing hearing, the trial court imposed a term of seven years in prison for the attempted murder conviction, enhanced by one year for the section 12022, subdivision (b)(1) enhancement, for a total term of eight years. On count 8, the midterm of two years was imposed, stayed pursuant to section 654.

Various fines and fees were imposed, and restitution ordered, including an award of \$2,285 restitution to be paid to the victims. Credits of 1,428 actual days and 214 conduct days were awarded, for a total of 1,642 days.

The trial court issued a 10-year protective order for the victims, pursuant to section 136.2, subdivision (i). Gutierrez was ordered to comply with the registration requirements of section 457.1.

The abstract of judgment filed March 14, 2018, accurately reflects the trial court's oral pronouncement of judgment. On April 6, 2018, Gutierrez filed a notice of appeal.

### **DISCUSSION**

Gutierrez filed a notice of appeal stating he was appealing from the sentence or matters occurring after the plea that do not affect the plea. No certificate of probable cause was requested or granted.

Appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436 on October 10, 2018. That same day, this court issued its letter inviting Gutierrez to submit supplemental briefing. No supplemental brief was filed.

By entering a plea of no contest, Gutierrez admitted the sufficiency of the evidence establishing the attempted murder and attempted arson offenses, and the enhancement, and, therefore, is not entitled to a review of any issue going to the question of guilt of the underlying offenses. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.)

Once a no contest plea is entered in exchange for specified benefits, both parties must abide by the agreement. (*People v. Segura* (2008) 44 Cal.4th 921, 929–930.) Gutierrez received the benefit of his bargain. The trial court imposed a sentence that was in accordance with the plea agreement. Having received the benefit of his bargain, he cannot “better the bargain through the appellate process.” (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.